In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-392

HAROLD S. KAHN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, a former official of the Internal Revenue Service, was indicted in July 1969 on eight counts alleging that he conspired to commit offenses involving tax fraud, that he made false statements in tax returns, and that he bribed another Internal Revenue Service official in violation of 18 U.S.C. 371, 2, 1001, 201(b), 201(f), and 26 U.S.C. 7214. He pleaded guilty to three counts following the trial court's denial of pretrial motions, and was sentenced to fifteen months imprisonment and fined $20,000. The court of appeals dismissed his appeal (Pet. 15-16).

The facts are not disputed. In January 1968, petitioner was arrested on bribery charges and released

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on bond. The ensuing investigation resulted in evidence of other offenses, culminating in the eight-count indictment against him in July 1969.

Petitioner, in April 1971, moved to dismiss the indictment on the ground that he had been denied a speedy trial, and to suppress evidence that allegedly had been illegally seized. The district court denied the motions. Petitioner, represented by counsel, then withdrew his not guilty plea and, after extensive questioning by the court, entered unconditional pleas of guilty to three counts. He filed a notice of appeal and sought bail pending the appeal. The district court and the court of appeals denied bail,[1] and petitioner began serving his sentence on June 28, 1971. On August 18, 1971, the court of appeals dismissed the appeal on the government's motion (Pet. 15–16).

Petitioner's only contention here is that the court below erred in dismissing the appeal. He urges that he was entitled to full appellate review of the denial of his motions to suppress evidence and to dismiss for lack of a speedy trial. It is well settled, however, that a voluntary and unqualified plea of guilty—such as petitioner entered here—constitutes a waiver of all non-jurisdictional defects. See, *e.g.*, *United States* v. *Doyle*, 348 F. 2d 715, 718 (C.A. 2); *Davis* v. *United States*, 347 F. 2d 374, 375 (C.A. 9); *United States* v. *Spada*, 331 F. 2d 995, 996 (C.A. 2), certiorari denied, 379 U.S. 865; *Hoffman* v. *United States*, 327 F. 2d 489,

[1] Mr. Justice Harlan denied bail in July 1971, Mr. Justice Marshall denied a second application for bail in September 1971, and denied reconsideration in October 1971.

490 (C.A. 9); *Mahler* v. *United States,* 333 F. 2d 472 (C.A. 10), certiorari denied, 379 U.S. 993; *Harris* v. *United States,* 288 F. 2d 790, 792–793 (C.A. 8); *United States* v. *Hetherington,* 279 F. 2d 792, 796 (C.A. 7), certiorari denied, 364 U.S. 908; *United States* v. *Washington,* 237 F. 2d 632, 633 (C.A. 3); *Bloombaum* v. *United States,* 211 F. 2d 944, 945 (C.A. 4). Petitioner's guilty pleas thus foreclosed his "right to object to * * * how the evidence may have been obtained against him." *Mahler* v. *United States, supra,* 333 F. 2d at 474. The lack of speedy trial claim similarly does not raise a jurisdictional defect. *See United States* v. *Doyle, supra,* 348 F. 2d at 718–719. In these circumstances, it is clear that the court of appeals did not err in dismissing petitioner's appeal. Compare *United States* v. *Eskridge,* 395 F. 2d 751 (C.A. 4); *Nease* v. *United States,* 362 F. 2d 256 (C.A. 5); *Vick* v. *United States,* 304 F. 2d 379 (C.A. D.C.); *Brown* v. *United States,* 293 F. 2d 149 (C.A. D.C.).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.
FRED B. UGAST,
Acting Assistant Attorney General.
JOHN P. BURKE,
RICHARD B. BUHRMAN,
Attorneys.

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